

110TH CONGRESS
1ST SESSION

H. R. 904

To better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2007

Mr. UDALL of Colorado (for himself and Mr. PERLMUTTER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rocky Flats Special
5 Exposure Cohort Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) The Energy Employees Occupational Illness
2 Compensation Program Act of 2000 (42 U.S.C.
3 7384 et seq.) (referred to in this section as the
4 “Act”) was enacted to ensure fairness and equity for
5 the civilian men and women who, during the past 50
6 years, performed duties uniquely related to the nu-
7 clear weapons production and testing programs of
8 the Department of Energy and its predecessor agen-
9 cies by establishing a program that would provide ef-
10 ficient, uniform, and adequate compensation for be-
11 ryllium-related health conditions and radiation-re-
12 lated health conditions.

13 (2) The Act provides a process for consideration
14 of claims for compensation by individuals who were
15 employed at relevant times at various locations, but
16 also includes provisions designating employees at
17 certain other locations as members of a special expo-
18 sure cohort whose claims are subject to a less-de-
19 tailed administrative process.

20 (3) The Act also authorizes the President, upon
21 recommendation of the Advisory Board on Radiation
22 and Worker Health, to designate additional classes
23 of employees at Department of Energy facilities as
24 members of the special exposure cohort if the Presi-
25 dent determines that—

1 (A) it is not feasible to estimate with suffi-
2 cient accuracy the radiation dose that the class
3 received; and

4 (B) there is a reasonable likelihood that
5 the radiation dose may have endangered the
6 health of members of the class.

7 (4) It has become evident that it is not feasible
8 to estimate with sufficient accuracy the radiation
9 dose received by employees at the Department of
10 Energy facility in Colorado known as the Rocky
11 Flats site for the following reasons:

12 (A) Many worker exposures were
13 unmonitored or were not monitored adequately
14 over the lifetime of the plant at the Rocky Flats
15 site. Even in 2004, a former worker from the
16 1950's agreed to be scanned under the former
17 radiation worker program of the Department of
18 Energy and was found to have a significant in-
19 ternal deposition of radiation that had been un-
20 detected and unrecorded for more than 50
21 years.

22 (B) No lung counter for detecting and
23 measuring plutonium and americium in the
24 lungs existed at Rocky Flats until the late
25 1960s. Without this equipment, the very insol-

1 uble oxide forms of plutonium cannot be de-
2 tected, and a large number of workers had in-
3 halation exposures that went undetected and
4 unmeasured.

5 (C) Exposure to neutron radiation was not
6 monitored at the Rocky Flats site until the late
7 1950's, and most of those measurements
8 through 1970 have been found to be in error.
9 In some areas of the plant at the site, the neu-
10 tron doses were as much as 2 to 10 times as
11 great as the gamma doses received by workers,
12 but only gamma doses were recorded.

13 (D) Radiation exposures of many workers
14 at the Rocky Flats site were not measured (and
15 in some cases estimated doses were assigned),
16 while some records have been destroyed or lost.
17 As a result, the exposure histories and other
18 data available are not adequate to properly de-
19 termine whether Rocky Flats workers qualify
20 for compensation under the Act.

21 (E) The model that has been used for dose
22 reconstruction by the National Institute for Oc-
23 cupational Safety and Health (referred to in
24 this section as the "Institute") in determining
25 whether Rocky Flats workers qualify for com-

1 pensation under the Act is in error. The default
2 values used for particle size and solubility of
3 the internally deposited plutonium in workers
4 are in error. Use of these erroneous values to
5 calculate internal doses for claimants can result
6 in dose calculations of as much as 3 to 10 times
7 below what the Rocky Flats records and au-
8 topsy data indicate.

9 (5) The administrative costs related to Rocky
10 Flats claims have been disproportionately high rel-
11 ative to the number of claims that have been proc-
12 essed.

13 (6) Some Rocky Flats workers, despite having
14 worked with tons of plutonium and having known
15 exposures leading to serious health effects, have
16 been denied compensation under the Act as a result
17 of potentially flawed calculations based on records
18 that are incomplete or in error, as well as the use
19 of incorrect models.

20 (7) Achieving the purposes of the Act with re-
21 spect to workers at Rocky Flats is more likely to be
22 achieved if claims by those workers are subject to
23 the administrative procedures applicable to members
24 of the special exposure cohort.

1 (b) PURPOSE.—The purpose of this Act is to revise
2 the Energy Employees Occupational Illness Compensation
3 Program Act of 2000 to include certain Rocky Flats work-
4 ers as members of the special exposure cohort.

5 **SEC. 3. DEFINITION OF MEMBER OF SPECIAL EXPOSURE**
6 **COHORT.**

7 (a) IN GENERAL.—Section 3621(14) of the Energy
8 Employees Occupational Illness Compensation Program
9 Act of 2000 (42 U.S.C. 7384l(14)) is amended by adding
10 at the end the following new subparagraph:

11 “(D) The employee was so employed for a
12 number of work days aggregating at least 250
13 work days before January 1, 2006, by the De-
14 partment of Energy or a Department of Energy
15 contractor or subcontractor at the Rocky Flats
16 site in Colorado.”.

17 (b) REAPPLICATION.—A claim that an individual
18 qualifies, by reason of section 3621(14)(D) of the Energy
19 Employees Occupational Illness Compensation Program
20 Act of 2000 (as added by subsection (a) of this Act), for
21 compensation or benefits under such Act shall be consid-
22 ered for compensation or benefits notwithstanding any de-
23 nial of any other claim for compensation with respect to
24 such individual.

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